

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2045.03
COMPLAINT INVESTIGATOR: Connie Rahe
DATE OF COMPLAINT: June 20, 2003
DATE OF REPORT: August 1, 2003
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: September 16, 2003

COMPLAINT ISSUES:

Whether the Gary Community School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program, specifically:

- a. Failing to provide the placement identified in the student's IEP for the entire school year;
- b. Failing to implement the behavioral intervention plan (BIP) as written; and
- c. Failing to provide homebound services as required.

511 IAC 7-27-3 by failing to include the requisite participants at the CCC meetings convened in April and May 2003.

511 IAC 7-29-1 by failing to provide educational services to a student with a disability who has been suspended from school for more than ten cumulative instructional days during the school year.

EXTENSION OF TIME:

On July 18, 2003, an extension of time was granted until August 1, 2003. Although no new issues were added to the complaint investigation during the extension of time, technical assistance was provided regarding the timeline applicable to an additional evaluation under 511 IAC 7-25-7.

FINDINGS OF FACT:

1. The Student is 14 years old and is eligible for special education and related services due to an emotional disability.
2. On May 2, 2002, the Student's case conference committee (CCC) agreed upon change of placement for the Student, to a day treatment program, for the period from June 2, 2002, through June 2, 2003. The least restrictive environment (LRE) selected by the CCC was full or part-time special education instruction provided in a day program in a separate non-education facility such as a community mental health center or a private nonprofit facility. The CCC also decided that, in case the Student was not accepted in a private day treatment program, the LRE placement was to be special education instruction for the entire instructional day in a separate educational facility. The Case Conference Report/IEP (CCR/IEP) dated May 2, 2002, was signed by a parent of the Student, agreeing that the placement be implemented. In June of 2002, the Student began receiving services in the day treatment program located within a separate educational facility.

3. On August 27, 2002, the Student's CCC reconvened for an IEP review. Three new pages (cover page, page 8, and page 9) were substituted for the corresponding pages of the May 2, 2002 CCR/IEP. The LRE placement was clarified by selecting special education for the entire instructional day in a separate educational facility, with a note adding that the Student will remain in this setting until evaluation is completed. The recommended services section was clarified by specifically referring to day treatment and identifying the separate educational facility by name. At the conclusion of the meeting, the Student's parent signed consent for evaluation. The additional evaluation was completed August 30, 2002. The Student's placement remained the same until the CCC reconvened on April 3, 2003, when the placement was changed to homebound services.
4. As of May 2, 2002, the Student's CCC adopted a Behavior Intervention Plan (BIP) that addressed three targeted behaviors and the planned interventions for each. The BIP required daily data collection. A review of the BIP to evaluate its success was to take place no later than 6 weeks after inception.
5. To address the Student's truancy from class, the BIP required the Student to obtain a pass from the teacher, and a paraprofessional was to meet the Student at the bus and to escort the Student to class. If the Student was truant from class, detention was to be administered, and a call to parents would be made. Telephone calls to the Student's parents were not required by the BIP in any other situation. To address the Student's out-of-seat and off-task behavior, the BIP required the Student to remain in cubicle seating until focused, with a paraprofessional seated nearby to help the Student stay on task. To address defiance, the BIP required the Student to be escorted to the office by security personnel and a referral to administration.
6. The School has provided daily Student Behavior Checklists relating to a behavior intervention system that provides specified rewards when a student earns a sufficient number of points. Points are deducted when a student engages in unacceptable behaviors. The pre-printed list of thirty behaviors on the Student Behavior Checklist includes, but is not limited to, the three behaviors targeted in the Student's BIP. The School has provided no daily data collection or other documentation of the utilization of the interventions (e.g., cubicle seating) specifically required by the Student's BIP.
7. The Student's CCC met on April 3, 2003, and changed the Student's placement to homebound services. The Student's parent consented to the change of placement. The CCR/IEP described the special education services as five hours a week of homebound tutoring. The stated initiation date for services was April 3, 2003, and the duration date was June 10, 2003. The Student's suspension on April 3, 2003, and April 4, 2003, postponed the initiation date to the week beginning April 7, 2003. Due to Spring Break, school was not in session from April 21, 2003, through April 25, 2003. The CCR/IEP called for a total of 42.5 hours of homebound services, excluding the week of Spring Break.
8. On or about April 16, 2003, an appropriately licensed special education teacher was approved for the assignment to provide homebound tutoring services to the Student for four (4) hours per week over a period of seven weeks, beginning April 16, 2003, and ending June 11, 2003. The School authorized the teacher to provide a total of 28 hours of services. The teacher provided a total of 24 hours of services beginning April 17, 2003, and concluding June 5, 2003.
9. The School acknowledges that, at the CCC meeting held on April 3, 2003, the Student's teacher of record gave an oral report at the beginning of the meeting and left thereafter. The teacher of record did not participate in the remainder of the CCC meeting.
10. On May 15, 2003, the Student's father met with the Principal and signed an Application for Funding Support that was submitted to the Indiana Department of Education, Division of Exceptional Learners. The

CCR/IEP attached to that Application included pages that were dated various different dates, including March 18, 2003, and May 13, 2003. The Student's CCC did not meet on March 18, 2003, or on May 13, 2003. When the Student's father met with the Principal on May 15, 2003, no other persons were present.

11. On Friday, March 21, 2003, the Principal notified the Student's parent that the Student was not to return to school until a meeting with the parents was held. The unilateral removal was confirmed in a letter dated March 21, 2003, and mailed March 24, 2003. The Student was officially suspended from school from April 1, 2003, through April 4, 2003.
12. Instructional services were not provided to the Student on days that the Student did not attend school during the period of ten instructional days, from March 24, 2003, through April 4, 2003.

CONCLUSIONS:

1.
 - a. Findings of Fact #2 and #3 indicate that the Student's placement in a day treatment program operated by the school corporation in a separate educational facility was an agreed-upon placement for the 2002-2003 school year. Therefore, no violation of 511 IAC 7-27-7(a) occurred with respect to the Student's placement.
 - b. Findings of Fact #4, #5, and #6 indicate that the Student's Behavior Intervention Plan was not implemented as written. Therefore, a violation of 511 IAC 7-27-7(a) occurred.
 - c. Findings of Fact 7 and #8 indicates that there was a delay in starting homebound services and a failure to provide the number of hours of homebound services required by the Student's CCR/IEP. Therefore, a violation of 511 IAC 7-27-7(a) occurred.
2. Finding of Fact #9 indicate that a required participant did not participate in the CCC meeting on April 3, 2003. Finding of Fact #10 indicates that no CCC meeting, with required participants, took place on May 13, 2003, or on May 15, 2003. Therefore, violations of 511 IAC 7-27-3 occurred.
3. Findings of Fact #11 and #12 indicate that the Student was unilaterally removed by the public agency from the Student's current placement, without the provision of educational services, for not more than ten (10) cumulative instructional days. Therefore, no violation of 511 IAC 7-29-1 occurred.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

On or before August 25, 2003, the Gary Community School Corporation shall reconvene the Student's case conference, with all required participants, to review evaluation(s) of the Student and to develop the Student's individualized education program for the 2003-2004 school year. During the course of that meeting, the case conference committee shall consider the compensatory services that may be required to address the violations found in this Complaint Investigation Report, including the failure to implement the BIP and the failure to provide the agreed amount of homebound services.

Documentation of compliance consisting of the Case Conference Report/IEP shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by September 17, 2003.

DATE REPORT COMPLETED: August 1, 2003 |